

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES WINDHAM,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 2:20-cv-0773 TLN DB P

ORDER

Plaintiff has requested an extension of time to file a third amended complaint. Good cause appearing, plaintiff's request will be granted.

Plaintiff has also requested a limited appointment of counsel to help him prepare a third amended complaint.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

The test for exceptional circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,

1 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
2 common to most prisoners, such as lack of legal education and limited law library access, do not
3 establish exceptional circumstances that would warrant a request for voluntary assistance of
4 counsel. In the present case, plaintiff states only that he requires counsel due to “ongoing
5 misconduct at this facility by rogue staff and inmates.” Plaintiff does not explain that allegation
6 any further. The court does not find the required exceptional circumstances for the appointment
7 of counsel.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff’s motion for an extension of time (ECF No. 18) is granted;
10 2. Plaintiff is granted sixty days from the date of this order in which to file a third
11 amended complaint; and
12 3. Plaintiff’s motion for the appointment of counsel (ECF No. 18) is denied.

13 Dated: November 2, 2020

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16 DEBORAH BARNES
17 UNITED STATES MAGISTRATE JUDGE
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